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8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA (San Francisco)**

10 DONNA BLALOCK; JAMES
11 BLALOCK; WENDELL BROWN;
12 DENNIS GODWIN; JAMES HANCOCK;
13 SHIRLEY HANCOCK; THOMAS
14 JAMES; MARY JAMES; TERRY
15 KEIBLER; RITA KEYS; DAN KEYS;
16 WILLIAM LINDSEY; LISA LINDSEY;
17 BRIAN LOBB; JAMES LOVELL;
18 EDWARD MOORE; and JULIUS
19 RIDDICK,

20 Plaintiffs,

21 v.

22 DEPUY ORTHOPAEDICS, INC.,
23 THOMAS P. SCHMALZRIED, M.D., A
24 PROFESSIONAL CORPORATION; and
25 DOES 1 through 20, inclusive,

26 Defendants.

CASE NO. 3:11-cv-04746-SBA

[State Case No. CGC-11-513626]

**ORDER EXTENDING TIME TO
RESPOND TO COMPLAINT (L.R. 6-1) RE
THOMAS P. SCHMALZRIED, M.D., A
PROFESSIONAL CORPORATION**

Complaint served: August 29, 2011

Removal Date: September 22, 2011

Current Response Date: October 29, 2011

Agreed Response Date: after ruling on
pending motions

27 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

28 Defendant Thomas P. Schmalzried, M.D., A Professional Corporation (“Defendant”) hereby requests, and Plaintiffs Donna Blalock; James Blalock; Wendell Brown; Dennis Godwin; James Hancock; Shirley Hancock; Thomas James; Mary James; Terry Keibler; Rita Keys; Dan Keys; William Lindsey; Lisa Lindsey; Brian Lobb; James Lovell; Edward Moore; and Julius

Riddick (“Plaintiffs”) hereby agree to Defendant’s request, for an extension of time for Defendant to file a response to Plaintiffs’ Complaint as follows:

WHEREAS, Plaintiffs’ Complaint was filed in state court on August 24, 2011 and Defendant was served on or about August 29, 2011;

WHEREAS, this matter was removed to this court on September 22, 2011;

WHEREAS, Defendant and Plaintiff previously stipulated to a 30-day extension of time for Defendant to respond up to October 29, 2011;

WHEREAS, since the above noted stipulation was filed, the following has occurred in this matter:

- 1) A Conditional Transfer Order regarding the transfer of this matter to MDL No. 2244, *In Re: DePuy Orthopaedics, Inc., Pinnacle Hip Implant Products Liability Litigation*, was filed on October 11, 2011, which order was opposed by Plaintiffs on October 12, 2011. Plaintiffs’ motion to vacate this order is due on October 26, 2011 and DePuy’s response is due November 16, 2011.
- 2) On September 27, 2011, DePuy filed a Motion to Stay pending transfer to MDL No. 2244, which Plaintiffs opposed on October 11, 2011. The stay motion is set for hearing on February 7, 2012.
- 3) On October 13, 2011, Plaintiffs filed a Motion to Remand this action to the Superior Court for the County of San Francisco, along with an ex parte application to set hearing on this motion before December 1, 2011. DePuy opposed the ex parte application and has stated an intention to oppose the remand motion. A hearing date has not yet been set for this motion.

WHEREAS, all of the issues described above remain unresolved at present, leaving doubt as to which court this matter will ultimately be litigated in and what manner of response would be consistent with the rules and procedures of that court.

WHEREAS, Defendant requests an extension of time to respond to Plaintiffs’ complaint until such time as the venue and jurisdiction of this matter is resolved, and Plaintiffs have agreed. In addition to avoiding unnecessary confusion and additional complication while the pending

1 motions and issues are addressed and resolved, this extension will also allow the parties
2 sufficient time and opportunity to further meet and confer on the claims and causes of action
3 asserted in the complaint with the goal of potentially avoiding future motions by Defendant,
4 partially in light of the resolution of the issues already pending. Thus, this extension of time
5 allows this Court to resolve these issues of jurisdiction and venue before Defendant responds to
6 the Complaint.

7 THEREFORE, the parties agree that the response of Defendant Thomas P. Schmalzried,
8 A Professional Corporation to the Complaint shall be due at the earlier of these two potential
9 days:

- 10 1. 20 days after the United States Judicial Panel on Multidistrict Litigation rules on
11 whether to transfer this matter to MDL No. 2244, *In Re: DePuy Orthopaedics, Inc.,*
12 *Pinnacle Hip Implant Products Liability Litigation*; or,
- 13 2. 30 days after this Court grants Plaintiffs' Motion to Remand, if such a ruling occurs.

14 **IT IS SO ORDERED.**

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17 **DATED: _10/25/11**

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21 Judge of the United States District Court
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